IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No.4460 of 2005(O&M)
Date of decision: January 30,2007

Bharat Bhushan V. Raj Rattan

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri P.N.Makani,Advocate, for the appellant.
Shri A.K.Jaiswal, Advocate, for the respondent.

Viney Mittal,J.

For the reasons given in the application, the delay in filing the present appeal is condoned.

R.S.A. No.4460 of 2005

This order shall dispose of two regular second appeals being R.S.As. No. 4460 and 4463 of 2005. Both the appeals have been filed by the same appellant, Bharat Bhushan and have arisen out of two separate suits filed by the parties against each other. Both the suits were consolidated by the trial court and were disposed of by a common judgment. Even the appellate court decided the appeals arising out of the two suits by a common judgment.

The present respondent, Smt. Raj Rattan, filed a suit for mandatory injunction and for permanent injunction against Mohan Lal (since dead) father of Bharat Bhushan (present appellant). It was pleaded by Smt. Raj Rattan that she was owner in possession of House No.54-B. She had entered into an agreement to sell the western portion of the house to defendant, Mohan Lal, and had latter on sold the same vide registered sale deed dated January 1,1991. It

was agreed between the parties that the entire dividing wall between the eastern and western portion of the house was not sold and the dividing wall was to remain as exclusive property of the plaintiff. However, Mohan Lal had removed some construction over the dividing wall. The plaintiff claimed that the aforesaid demolition of the construction by Mohan Lal was illegal and bad. In these circumstances, she sought mandatory injunction for directing defendant, Mohan Lal, to remove the construction raised by him on the aforesaid dividing wall and not to raise any further construction on the said dividing wall.

This suit was contested by defendant, Mohan Lal, He admitted that he had purchased House No.54-B for a consideration of Rs.1,50,000/- through a registered sale deed dated January 11991. According to the said defendant, the total area of the house was 314 sq. yards as incorporated in the sale deed but actual possession of only 285 sq. yards was delivered. The vendor had promised to deliver the possession of the remaining part later on but the same was not being delivered on one pretext or the other. The house in question was in dilapidated condition at the time of sale and since defendant wanted to renovate the same and carry out repairs, therefore, the suit in question was filed by aforesaid plaintiff, Raj Rattan, with a view to harass him.

A separate suit was filed by Bharat Bhushan (son of Mohan Lal). By the time of filing the said suit, Mohan Lal had died. This suit was filed for possession of 28.86 sq. yards of area. Identical pleas were raised by Bharat Bhushan in this suit as were raised by Mohal Lal in the written statement filed in the connected suit. Bharat Bhushan claimed that possession of the deficient area, as per the sale deed, was liable to be given to him.

This suit was contested by Raj Rattan. She again pleaded that only the western portion of the house had been sold and at no point of time, the total area of 314 sq. yards had ever been sold.

Both the suits were consolidated by the trial court.

On appreciation of evidence led by the parties, the trial Court held that although Smt. Raj Rattan had sold only the western portion of the house in question to Mohan Lal but since in the sale deed area of 314 sq. yards had been mentioned and at no point of time, the said sale deed had ever been challenged by Smt. Raj Rattan, therefore, she was not entitled to any relief. Similarly with regard to the claim made by Bharat Bhushan in the connected suit, it was held that only the western portion of the house in question had been sold and,therefore, the vendee was not entitled to any further area. In these circumstances, both the suits were dismissed by the trial court.

Both he parties filed two separate appeals before the appellate Court. The said appeals were also taken up for consideration by the appellate Court jointly. The appellate Court reappraised the entire evidence. On such reappraisal, the appellate Court came to the conclusion that although in the sale deed Ex.D2, the area of the sold portion of the house is mentioned as 314 sq. yards but in the agreement of sale Ex.P1, no area of the subject matter was given but only description of portion of the house was given by giving the boundaries. In these circumstances, the appellate court held that once there was a conflict in description and measurement of the property, which was a subject matter of sale between the parties, then the boundaries must prevail. Consequently it was held that Smt. Raj Rattan had merely sold western portion of

house No.54-B to Mohan Lal and,therefore, neither Mohan Lal nor his successor Bharat Bhushan could agitate the matter by raising a claim that any lessor area had been given or that they are entitled to make deficiency good by seeking possession of additional area. In these circumstances, the appellate Court allowed the appeal filed by Smt.Raj Rattan and mandatory injunction was issued against Mohan Lal/Bharat Bhushan to remove the construction wrongly and illegally raised by them on the dividing wall. A permanent injuction was also issued for restraining the said party from raising any further construction on the dividing wall. The appeal filed by Bharat Bhushan was, consequently, dismissed.

It is, in these circumstances, that these two appeals have arisen.

I have heard Shri P.N.Makani, learned counsel appearing for the appellant and Shri A.K.Jaiswal, learned counsel for the respondent and with their assistance have also gone through the record of the case.

Learned counsel for the appellant has contended that since as per the sale deed, there was a deficiency in the area sold to the vendee, therefore, he was entitled to additional area.

I have duly considered the aforesaid contention of the learned counsel but in view of the detailed discussion of the evidence by the appellate Court, I do not find any merit in the said contention. Once the property purchased by the present appellant had been described in the agreement of sale by boundaries, then he could not make any further grievance with regard to any lessor area having been given to him. It is not in dispute that the entire area as per boundaries described in the agreement, is in possession of the appellant.

No question of law much less any substantial question of law, arises in the present appeals.

Consequently, I do not find any merit in both the appeals. The same are dismissed.

January 30,2007 (Viney Mittal)
sks Judge